

THE HONORABLE BENJAMIN H. SETTLE

**IN THE UNITED STATE DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

JACOB KRAKAUER, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

RECREATIONAL EQUIPMENT, INC.,

Defendant.

Case No. 3:22-cv-5830-BHS

NOTICE OF SUPPLEMENTAL
AUTHORITY IN SUPPORT OF
DEFENDANT REI'S MOTION TO
DISMISS

NOTED FOR HEARING:
APRIL 10, 2023

Pursuant to LCR 7(n), Defendant Recreational Equipment Inc. ("REI") by and through its undersigned counsel, respectfully submits a supplemental authority decision issued on November 29, 2023 by the United States District Court Southern District of New York (attached as Exhibit A), *Esquibel v. Colgate-Palmolive Co.*, No. 23-CV-00742-LTS, 2023 WL 7412169, at *1 (S.D.N.Y. Nov. 9, 2023), in further support of its Motion to Dismiss (Dkt. 23). The Southern District of New York's decision in *Esquibel*, which was not issued until after all briefing on the pending Motion to Dismiss in this case had been submitted, is relevant to arguments mentioned in the Motion and in Plaintiff's Opposition (Dkt. No. 28).¹

In *Esquibel*, the plaintiffs alleged that the defendant retailer failed to disclose the

¹ Plaintiff filed an Errata at Dkt. 29.

1 presence of PFAS in their personal care products, specifically mouthwash. The plaintiff
 2 claimed that a third-party independent testing lab detected PFAS in the mouthwash, despite
 3 the product's 'natural' labeling. *Id.* at 5. The trial court granted the defendant's motion to
 4 dismiss and held that plaintiffs lacked standing, because they failed to establish an injury in
 5 fact. The court further found that plaintiffs failed to sufficiently allege details of the
 6 independent testing, regarding "how many units of the Product were tested, where those units
 7 were acquired, where the test took place, or what entity performed the test." *Id.*

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 9 Dated this 14th day of December, 2023.

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